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## REMARKS

The March 1, 2007 Office Action is based on pending Claims 52–87. By this Response, Applicant is amending Claims 52–60, 65–73, and 78–86 without prejudice or disclaimer. Claims 61–64, 74–77 and 87 remain as previously presented.

Thus, after entry of the foregoing amendments, Claims 52–87 are pending and presented for further consideration. In view of the foregoing amendments and the remarks set forth below, Applicant respectfully submits that Claims 52–87 are in condition for allowance.

## SUMMARY OF OBJECTIONS AND REJECTIONS

The March 1, 2007 Office Action objects to Claims 52–61, 65–74 and 78–86 for claim informalities.

The Office Action rejects Claims 52, 65 and 78 under 35 U.S.C. § 112, second paragraph, as being indefinite.

In addition, the Office Action withdraws the previous indication of allowable subject matter and rejects Claims 52–87 under 35 U.S.C. §§ 102(a) and (e) as being anticipated by U.S. Patent No. 6,112,239 to Kenner et al. (“Kenner”).

## CLAIM INFORMALITIES

The Office Action objects to Claims 52–61, 65–74 and 78–86 for various informalities.

Although Applicant believes that the claims as previously presented satisfy the statutory requirements, Applicant has clarified the claims in accordance with the suggestions made in the March 1, 2007 Office Action.

## CLAIM REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejects Claims 52, 65 and 78 under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential elements. In particular, the Office Action states that, although Claim 52 recites a first network device and a second network device, “there is not ‘the first network device’ or ‘the second network device’ any place in the claim limitations.” The Office Action further states that “[i]t is unclear

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and vague what happens to the 'first network device' and the 'second network device' after the 'management software operates' on them."

Applicant respectfully disagrees with rejection. Claim 52 states "providing a management software component operating on a first network device" (emphasis added). As disclosed in the specification and drawings, the phrase "operating on a first network device" means the management software component resides, or is executed, on the first network device. The same reasoning applies for the claimed "plurality of media software components . . . operating on at least a second network device" (see, e.g., page 4, third paragraph; page 27, first full paragraph; Figures 1 and 9–12).

The remaining portions of Claim 52 continue to refer to, and recite functions of, the management software component and the media software components. Thus, Applicant respectfully submits that there is no "disconnect between claim limitations one and two and the other limitations three through four," as suggested by the Office Action. There is no requirement that a phrase (e.g., first network device) in one claim element must be repeated in other claim elements. Rather, M.P.E.P. §2172.01, which is cited by the Office Action, states that "a claim does not necessarily fail to comply with 35 U.S.C. 112, second paragraph, where the various elements . . . are not directly functionally related" (stating that a claim which fails to interrelate essential elements of the invention as defined by applicant(s) in the specification may be rejected under 35 U.S.C. 112, second paragraph" (emphasis added)).

Moreover, Applicant respectfully submits that it is irrelevant what happens to the first and second network devices after the management software component and media software components, respectively, operate (or reside) on them.

Accordingly, Applicant submits that Claims 52–87 are in condition for allowance, and Applicant respectfully requests that the rejections under 35 U.S.C. § 112, second paragraph, be withdrawn.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102(a)/(e)**

The Office Action rejects Claims 52–87 as being anticipated by Kenner. In view of the foregoing amendments and for at least the reasons set forth below, Applicant respectfully disagrees and requests reconsideration of Claims 52–87.

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**Independent Claim 52**

Focusing on independent Claim 52, in one embodiment of Applicant's invention a method is disclosed for the backup and retrieval of data. The method includes: (i) providing a management software component operating on a first network device; (ii) providing media software components operating on at least a second network device; (iii) selecting one of the media software components using the management software component; (iv) controlling the selected media software component using the management software component; (v) controlling backup and retrieval of data to a storage device using the selected media software component; and (vi) recording a physical address indicating a location of the data on the storage device.

Kenner is directed to a system and method for acquiring network performance information and selecting optimum delivery sites for receiving multimedia content. As shown and described with reference to Figure 1, the Kenner system includes multiple user terminals (12, 16) that are connected to the internet (10) through an internet service provider (ISP) (14). The user terminal (12) further includes a configuration utility (34) that determines, based on information received from a mirror service provider (32), which of the delivery sites (26, 28, 30) is best suited for improved network communication.

Kenner does not disclose the method of independent Claim 52. For example, page 4 of the March 1, 2007 Office Action states that "the browser (38) Fig. 1 is one of the selectable software components and gets selected by simply using it." However, Claim 52 reads that the management software component is used to select one of the media software components. The ISP (14), which the Office Action identifies as the management software component, does not select one of the multiple media software components. Rather, Kenner appears to merely disclose that the ISP (14) is a computer, router, or terminal server connected to the Internet and used to host user terminals (see, e.g., col. 7, lines 18-28).

Furthermore, Kenner does not disclose that the ISP (14) (Kenner's "management software component") controls the selected media software component. Although the Office Action suggests that the ISP (14) may control content being sent to

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the browser (38) (Kenner's "selected media software component"), Kenner does not disclose that the ISP controls the browser (38) in any way.

In addition, the Office Action identifies Kenner's user terminal (12) as disclosing Applicant's claimed "first network device." The Office Action then asserts that the configuration utility (34), client program (36), browser (38), which all reside on the user terminal (12), disclose the claimed "media software components." However, Claim 52 specifically recites that the media software components operate, or reside, on at least a second network device, not all on the first network device. Thus, the claim limitation concerning the second network device does not appear to be disclosed by the Kenner system.

Kenner also does not disclose that the selected media software component is used to control backup and retrieval of data to a storage device and recording a physical address indicating a location of data stored on the storage device. Although the Office Action suggests that "the browser (38) inherently records an IP address" and may also store cookies, Applicant was unable to find such disclosure in Kenner. Moreover, Applicant respectfully submits that such an interpretation of Kenner still does not disclose using the selected media software component to control backup and retrieval of data to a storage device and recording a physical address indicating a location of data stored on the storage device. If the Examiner continues to rely on features that are "inherently" disclosed, Applicant respectfully requests the Examiner to provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art" (see M.P.E.P. § 2112 (IV)).

Because Kenner not disclose each and every element of independent Claim 52, Applicant asserts that Claim 52 is not anticipated by Kenner, and Applicant respectfully requests allowance of Claim 52.

#### **Independent Claims 65 and 78**

Independent Claim 65 is believed to be patentably distinguished over Kenner for reasons similar to those set forth above with respect to the patentability of independent Claim 52 and for the different aspects recited therein.

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Independent Claim 78 is believed to be patentably distinguished over Kenner for reasons similar to those set forth above with respect to the patentability of independent Claim 52 and for the different aspects recited therein.

### **Dependent Claims**

Claims 53–64 depend from independent Claim 52 and are believed to be patentably distinguished over the cited art for the reasons set forth above with respect to Claim 52 and for the additional features recited therein.

Claims 66–77 depend from independent Claim 65 and are believed to be patentably distinguished over the cited art for the reasons set forth above with respect to Claim 65 and for the additional features recited therein.

Claims 79–87 depend from independent Claim 78 and are believed to be patentably distinguished over the cited art for the reasons set forth above with respect to Claim 78 and for the additional features recited therein.

### **REQUEST FOR TELEPHONE INTERVIEW**

Pursuant to M.P.E.P. § 713.01, in order to expedite prosecution of this application, Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner as soon as the Examiner has considered the effect of the arguments presented above. Applicant's attorney can be reached at the general office number listed below.

### **CONCLUSION**

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain, the Examiner is cordially invited to contact the undersigned such that the issues may be promptly resolved.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: Christian A. Fox  
Christian A. Fox  
Registration No. 58,507  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404

3807019  
052407